

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

MAIL PROCESSING NETWORK RATIONALIZATION
SERVICE CHANGES, 2011

Docket No. N2012-1

**UNITED STATES POSTAL SERVICE NOTICE OF
FILING LIBRARY REFERENCE USPS-LR-N2012-1/NP14
AND APPLICATION FOR NON-PUBLIC STATUS**

In accordance with Rule 31(b)(2), the United States Postal Service provides notice today that it files the following Category 5 Library Reference:

USPS-LR-N2012-1/NP14 Non-Public "All Sources" Quantitative Market Research
Materials

Parties interested in this research should be aware that the "All Sources" market research was abandoned without completion at the direction of the Postal Service. Thereafter, the underlying contract was modified with a new task order to undertake research with a specific focus upon quantitative change projected to arise from implementation of network rationalization. Research conducted pursuant to the new task order is documented by the testimony of witnesses Elmore-Yalch (USPS-T-11) and Whiteman (USPS-T-12).

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NONPUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. § 3007.21 and Order No. 225,¹ the United States Postal Service (Postal Service) hereby applies for nonpublic treatment of certain materials filed under seal with the Commission. The materials covered by this application start with one file containing disassociated (Category 5) materials for market research not relied upon in this docket (“All Sources Research”), but which resembles in certain research design respects the market research sponsored by witness Elmore-Yalch (USPS-T-11) and witness Whiteman (USPS-T-12). The non-public information in this library reference is non-public for the same reasons material is protected from public release in USPS-LR-N2012-1/NP1.²

The research undertaken but not sponsored by witness Elmore-Yalch and Opinion Research Corporation (ORC) allows calculation of changes in volume, revenue and contribution for customers in six customer segments if all of the many changes considered at various times by Postal Service management were made effective (at one time). See the response of witness Whiteman to DFC/USPS-T12-9 (February 24, 2012). The results thus reflect customer specific responses regarding actual mail volume mailed in the past and projections of what would be mailed in an “All Sources” post-implementation environment. Since some respondents were selected with certainty, such information is inherently commercially sensitive to respective respondents. In any event, market research customarily promises respondents

¹ PRC Order No. 225, Final Rules Establishing Appropriate Confidentiality Procedures, Docket No. RM2008-1, June 19, 2009.

² The Postal Service anticipates that additional files may yet become part of this library reference; if so, they would contain the same specific confidential information of the two types referenced herein, 1) mailer specific volumes, or 2) volume, revenue and contribution information for Postal Service competitive products. So long as these constraints are observed, no further application for nonpublic treatment should be necessary or appropriate since it would be duplicative.

confidentiality, measures the Commission has previously approved based on the expectation that results based on confidential reports are inherently more trustworthy.

The quantified market research results are used to calculate impacts upon volume, revenues and contribution. These calculations rely upon annual volumes for competitive products, information that is commercially sensitive to the Postal Service. Fundamentally, these materials were collected, whether in the course of market research or business, pursuant to business standard promises or expectations of confidentiality.

(1) The rationale for claiming that the materials are nonpublic, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

The materials designated as nonpublic consist of information collected from market research respondents, who are customers of the Postal Service. Customer specific information regarding past mailing history and future mailing plans, which is necessary to calculation of the estimates of volume, revenue, contribution and costs, both historically and if changes described in the All Changes Research were implemented together.

Promises of confidentiality are an industry standard practice for survey research companies such as ORC; failure to extend such promises would be considered unprofessional and would accordingly undercut the perceived merit of the research methods and utility of any findings.

Substantially the same rationale protects customer specific information collected at the time of mailing both competitive and market dominant products. The sum of such information, at least for competitive products, becomes confidential business

information for the Postal Service itself. Discussion of how specific firms conduct business, and the causative factors that drive business decisions, is the kind of information substantially all businesses would prefer to maintain in confidence.

Protection of the materials included in USPS-LR-N2010-1/NP14 is also informed by the Code of Standards and Ethics of the Council of American Survey Research Organizations (see <http://www.casro.org/codeofstandards.cfm>). Section I, Responsibilities to Respondents, subsection (A)(3)(a) provides, in pertinent part:

The use of survey results in a legal proceeding does not relieve the Survey Research Organization of its ethical obligation to maintain in confidence all Respondent-identifiable information or lessen the importance of Respondent anonymity. Consequently, Survey Research firms confronted with a subpoena or other legal process requesting the disclosure of Respondent-identifiable information should take all reasonable steps to oppose such requests, including informing the court or other decision-maker involved of the factors justifying confidentiality and Respondent anonymity and interposing all appropriate defenses to the request for disclosure.

Commission practice has long supported maintenance of confidentiality of survey respondents' specific information, and this occasion brings no justification to any change in that practice. In the Postal Service's view, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. §§ 410(c)(2, 4-5) and 412; and 5 U.S.C. § 552(b)(3) and (4).³

³ In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

(2) Identification, including name, phone number, and email address for any third-party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

The Postal Service believes that, in addition to the Postal Service itself, the only third parties that have a proprietary interest in the information included in non-public Library Reference USPS-LR-N2012-1/NP14 are the individuals and firms who served as respondents/participants in the quantitative market research conducted by witness Elmore-Yalch on behalf of the Postal Service. Identifying those individuals and firms for the purpose of this Application would violate the CASRO provisions quoted, in part, above. The Postal Service does not have access to the identifying information of respondents and can accordingly give no notice to those parties, whose full details of personally identifying information have been retained by ORC. The Postal Service has previously discussed with witness Elmore-Yalch the procedures by which the Commission protects the confidentiality of information filed with it under seal; indeed, the current context very much parallels materials filed non-publicly as USPS-LR-N2012-1/NP1, and its own parallels. The Postal Service has already informed ORC, in compliance with 39 C.F.R. § 3007.20(b), of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. Witness Elmore-Yalch herself is the contact with ORC with whom the Postal Service has discussed this Application, which accommodates both title 39 and CASRO standards. In the meantime, Postal Service attorney Ken Hollies (202-268-3083) can serve as the Postal Service employee responsible for provision of notice to ORC.

(3) A description of the materials claimed to be nonpublic in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are nonpublic;

The materials contain mailing history information of respective postal customers, and confidential competitive product information of the Postal Service itself. In addition, customers have provided estimates of future mailing patterns based on information specific to the All Sources market research filed as disassociated materials (Category 5) before the Commission. Any of this information could reasonably be used by persons and firms that may attempt to extract competitive advantage as against the specific market research respondents' own businesses, or against the Postal Service itself.

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

Commercial harm could flow from the release of participant/respondent information in the form of harm to the business of ORC, given what would appear to be action in violation of its CASRO obligations.

Similarly, volume-related information pertaining to respective customers, or customer segments, could provide insight to Postal Service competitors who seek to attract the business of those same customers. Postal Service competitors could use such information to transport or otherwise position their products in such a way as to compete unfairly against the Postal Service. Competitors able to view the market research materials would gain specific insight into Postal Service customer behavior, both past and future, enabling them both to capture the benefit of market research in which the Postal Service has invested, and to follow up with customer acquisition by targeting postal customers using exquisitely well targeted marketing campaigns.

(5) At least one specific hypothetical, illustrative example of each alleged harm;

Hypothetical: A competitor or its representative obtains a copy of library reference USPS-LR-N2012-1/NP14, or similar information in library reference USPS-LR-n2012-1/NP1. It analyzes the data to determine the attributes of customers who make use of Postal Service products under particular circumstances. The competitor then targets members of that customer segment with an advertising program that emphasizes the positive vectors of its own products with enhanced foreknowledge of what is important to the target customer segment, and succeeds in winning that business.

Identified Harm: The competitor uses that information to target and acquire Postal Service customers, users of particular products for specific purposes. The Postal Service suffers harm in the competitive marketplace. Public disclosure of opportunities for advertising strategies allows the competitor of a large mailer to disrupt the large mailer's strategies or instead to focus on areas it knows the large mailer is not currently emphasizing. Either way, the net result is that the competitor gains what was previously some of that large mailer's business.

Hypothetical: A competitor or its representative obtains a copy of library reference USPS-LR-N2012-1/NP1, or similar information in library reference USPS-LR-n2012-1/NP1. This competitor of Opinion Research Corporation (ORC) undertakes comprehensive and extensive market research on behalf of a large federal agency.

Identified Harm: The ORC competitor then uses the information to fashion a more competitive bid in a forthcoming request for proposals issued by a large federal agency, to the competitive detriment of ORC.

Hypothetical: A competitor or its representative obtains a copy of library reference USPS-LR-N2012-1/NP1, or similar information in library reference USPS-LR-n2012-1/NP1. This competitor of specific market research respondents examines that mailer's use of the mails and discerns a way that its own products might be marketed so as to appeal to the respondent's own customers, and does so. The survey respondent's business is harmed by the improper disclosure of protected commercially sensitive information.

(6) The extent of protection from public disclosure deemed to be necessary;

The Postal Service maintains that the market research materials filed non-publicly should be withheld from persons involved in competitive decision-making. The research involves all customer segments (consumers, small business, and Preferred, Premier and National accounts) served by the mailing and shipping industries, so access to the materials should not be available to those responsible for, or on behalf of, competitive decision makers as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for competitive products should not be provided access to the nonpublic materials., as that would present the potential for one existing postal customer to take volume from another.

(7) The length of time deemed necessary for the nonpublic materials to be protected from public disclosure with justification thereof; and

The Commission's regulations provide that nonpublic materials shall lose nonpublic status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of

that status. 39 C.F.R. § 3007.30. If the Postal Service is informed that CASRO has any longer applicable time periods, it will so advise Commission staff.

(8) Any other factors or reasons relevant to support the application.

None.

Conclusion

For the reasons discussed, the Postal Service asks that the Commission grant its application for nonpublic treatment of the materials appearing in USPS-LR-N2012-1/NP14.